

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
DEL RIO DIVISION**

JASMINE C., an individual and on behalf of
M.C., a minor and her child, et al.

Plaintiffs,

v.

**DANIEL DEFENSE, LLC; DANIEL
DEFENSE, INC; OASIS OUTBACK, LLC;
and DOES 1-300,**

Defendants.

Civil Action No.: 2:23-cv-00014-AM

DECLARATION OF CHARLES A. BONNER IN SUPPORT OF PLAINTIFFS'

RESPONSE TO COURT'S ORDER TO SHOW CASE RE DISMISSAL (ECF DOC. 26)

I, Charles A. Bonner declare as follows:

1. I am an attorney duly licensed by the State of California to practice law before all courts in the State of California and admitted in the United States District Court for the Western District of Texas to appear in this case. I have been licensed to practice since May of 1979.
2. My business address is 475 Gate Five Road, Suite 211, Sausalito, CA 94965.
3. I have personal knowledge of the matters set forth herein, except those stated on information and belief. If called as a witness I could competently testify thereto.
4. On or around November 29, 2022, our office filed two actions on behalf of many Plaintiffs seeking justice for the horrible mass shooting that occurred on May 24, 2022, at Robb Elementary School in Uvalde TX. *JASMINE C., an individual and on behalf of M.C., a minor and her child, et al. v DANIEL DEFENSE, LLC; DANIEL DEFENSE, INC; OASIS OUTBACK, LLC* case no. 2:23-CV-00014-AM¹ (hereinafter referred to as "GUN SUPPLIER CASE 23-CV-14") seeks

¹ This case was filed in the Western District of Texas, Austin Division and was initially given the case number 1:22-cv-01251.

compensation from the gun manufacturer and gun retailer. *J.P., a minor, et al. v. THE UVALDE CONSOLIDATED INDEPENDENT SCHOOL DISTRICT, et al.* case no. 2:23-CV-00015-AM (hereinafter referred to as the “MUNICIPAL ENTITY CASE 23-CV-15”) seeks compensation from the various municipal entities that failed to protect the Robb Elementary School students and staff.

Facts related to *JASMINE C., an individual and on behalf of M.C., a minor and her child, et al. v DANIEL DEFENSE, LLC; DANIEL DEFENSE, INC; OASIS OUTBACK, LLC* case no. 2:23-CV-00014-AM

5. On February 17, 2023, despite not having been served with the complaint, Defendant Daniel Defense filed their Motion to Dismiss for lack of subject matter jurisdiction (ECF DOC 11). In response to this motion, on February 22, 2023, Plaintiffs filed their Amended Complaint (ECF DOC 14), which attempted to cure the jurisdictional issues. Ninety days from the date of the initial filing of the complaint, November 29, 2022, was February 27, 2023. Plaintiffs filed their Amended Complaint prior to the running of the 90-day deadline under Fed. R. Civ. P. 4(m).

6. On February 23, 2023, Plaintiffs received Issued Summons from the Court (ECF DOC 15). Pursuant to Fed. R. Civ. P. 4(m)

7. On March 8, 2023, 13 days after Plaintiffs received the summons and absent service, Defendant Daniel Defense filed their Amended Motion to Dismiss (ECF DOC 20) again, arguing a lack of subject matter jurisdiction.

8. After reviewing Defendant’s motion, on March 22, 2023, Plaintiffs filed a motion for an extension of time to file a response to the motion (ECF DOC 21). On March 29, 2023, the Court issued an Order granting Plaintiffs’ motion for an extension of time to file a response (ECF DOC 22). Plaintiffs sought this extension of time to further research the most efficient path forward. Recognizing that simply opposing the motion to dismiss (ECF DOC 20) could be a waste of judicial resources.

9. Plaintiffs determined that the most efficient path forward would be to consolidate the claims in the GUN SUPPLIER CASE 23-CV-14 case with the claims in the MUNICIPAL ENTITY CASE 23-CV-15. To this end, on March 31, 2023, Plaintiffs filed an ex parte motion for

leave to file a second amended complaint in the MUNICIPAL ENTITY CASE 23-CV-15 (ECF DOC 22, MUNICIPAL ENTITY CASE 23-CV-15). This motion was outside of the 90-day time period from filing the initial complaint but prior to the running of 90-days from filing the Amended Complaint (ECF DOC 14) on February 22, 2023².

10. On April 3, 2023, Plaintiffs filed a memorandum in opposition to Defendant Daniel Defenses' motion to dismiss, (ECF DOC 23) in the GUN SUPPLIER CASE 23-CV-14, alerting the Court to the Plaintiffs' plan to consolidate the two actions into one. Plaintiffs stated on page 2:

Thus, were the Court to grant Plaintiffs' Motion for Leave to Amend, Plaintiffs would henceforth and forthwith dismiss this present action, 2:23-cv-00014 and promptly serve their Second Amended Complaint on Defendants' Daniel Defense LLC, Oasis Outback LLC, as well as the entirety of name defendants including the newly named federal defendants under Case number, 2:23-cv-00015.

11. On April 10, 2023 Defendant Daniel Defense filed an Advisory to the Court, (ECF DOC 24) stating, inter alia, the following:

1. Daniel Defense agrees not to oppose Plaintiffs' Motion for Leave in J.P.
 2. If and when the Court grants Plaintiffs leave to file their Second Amended Complaint in J.P., Plaintiffs agree to dismiss Daniel Defense from this case without prejudice. Further, Daniel Defense will execute a waiver of service in J.P. Pursuant to Federal Rule of Civil Procedure 4(d)(3), Daniel Defense will have 60 days from that date to file their responsive pleading.
- Plaintiffs Ex Parte

12. As of the Court's Order to Show Cause on May 19, 2023, the Court has not yet granted or denied Plaintiffs' ex parte motion for leave to file a Second Amended Complaint.

² The filing of an amended complaint does not restart the clock with respect to the time allowed for timely service under Rule 4(m). *Bustinza v. Perez*, No. B-09-231, 2013 U.S. Dist. LEXIS 204538, at *27 n.38 (S.D. Tex. 2013)

Facts related to *J.P., a minor, et al. v. THE UVALDE CONSOLIDATED INDEPENDENT SCHOOL DISTRICT, et al.* case no. 2:23-CV-00015-AM

13. On February 1, 2023, despite not having been served with the complaint, Defendant Mandy Gutierrez filed her Motion to Dismiss Plaintiffs' Class Action Complaint Pursuant to Rules 12(B)(1) and (6), (ECF DOC 11).

14. On February 22, 2023, Plaintiffs filed their Amended Complaint, which added additional plaintiffs and Defendants. (ECF DOC 15). Ninety days from the date of the initial filing of the complaint, November 29, 2022, was February 27, 2023. Plaintiffs filed their Amended Complaint prior to the running of the 90-day deadline under Fed. R. Civ. P. 4(m).

15. On February 24, 2023 The Court Issued Summons as to Pedro Arrendondo, Joel Betancourt, Eduardo Canales, Daniel Coronado, Victor Escalon, Adrian Gonzalez, Mandy Gutierrez, Louis Landry, Juan Maldonado, Javier Martinez, Steven McGraw, Justin Mendoza, Ruben Nolasco, Donald Page, Mariano Pargas, Jesus "J.J." Suarez, Texas Department of Public Safety, City of Uvalde, Uvalde City Police Department, Uvalde Consolidated Independent School District, Uvalde Consolidated Independent School District Police Department, (ECF DOC 18).

16. On February 27, 2023, absent service, Defendant Mandy Gutierrez filed her MOTION to Dismiss Plaintiffs' Amended Class Action Complaint Pursuant to Rules 12(B)(1) and (6), (ECF DOC 19). After meeting and conferring with Counsel for Defendant Mandy Gutierrez, Plaintiffs stipulated to dismiss Mandy Gutierrez from the case. On March 13, 2023, Plaintiffs filed a stipulation of dismissal of Mandy Gutierrez (ECF DOC 21).

17. As discussed above, on March 31, 2023 Plaintiffs filed a motion seeking leave to file a second amended complaint, (EFC DOC 22 MUNICIPAL ENTITY CASE 23-CV-15) to consolidate the two actions.

I declare under penalty of perjury under the laws of the State of California and the United States that the foregoing is true and correct. Executed this 2nd day of June 2022, Sausalito, California.

/s/Charles A. Bonner
Charles A. Bonner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on or about June 2, 2023, a true and accurate copy of Plaintiffs' Motion for Extension of Time was served on counsel of record via the CM/ECF system.

Respectfully Submitted,

/s/Charles A. Bonner

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